

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

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<b>Universal Service Contribution</b>	)	<b>WC Docket No. 06-122</b>
<b>Methodology</b>	)	
<b>A National Broadband Plan For Our Future</b>	)	<b>GN Docket No. 09-51</b>
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**REPLY COMMENTS OF BT AMERICAS INC. AND ITS US AFFILIATES**

BT Americas Inc., a wholly owned indirect subsidiary of BT Group plc (“BT plc”), submits these Reply Comments on behalf of itself and other BT operating entities in the US (collectively referred to herein as “BT”) pursuant to the Commission’s FNPRM published in the Federal Register on June 7, 2012.<sup>1</sup>

**ARGUMENT**

It is clear from comments filed July 9, 2012, in response to the USF FNPRM that stakeholders have widely divergent views on whether and how the Commission should comprehensively reform the USF contribution mechanism. Some providers favor a connections mechanism,<sup>2</sup> some prefer a numbers mechanism,<sup>3</sup> some prefer to stick with a revenues

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<sup>1</sup> *Universal Service Contribution Methodology*, WC Docket No. 06-122, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Further Notice of Proposed Rulemaking, 77 Fed. Reg. 33896 (June 7, 2012) (“USF FNPRM”).

<sup>2</sup> See e.g. Comments of Google Inc., WC Dkt No. 06-122, pp. 5-9 (filed July 9, 2012); Comments of Sprint Nextel Corp., WC Dkt No. 06-122, pp. 25-28 (filed July 9, 2012) (“Sprint Comments”); Comments of Vonage Holdings Corp., WC Dkt No. 06-122, p.2 (filed July 9, 2012).

<sup>3</sup> See e.g. Comments of Verizon, WC Dkt No. 06-122, pp 46-48 (filed July 9, 2012) (“Verizon Comments”) (Verizon articulates fewer difficulties with a contribution mechanism based on in-use working numbers than a connections-based mechanism); Comments of Ad Hoc

mechanism,<sup>4</sup> some propose a hybrid mechanism,<sup>5</sup> and one commenter proposes as an alternative a wholly new mechanism that apportions universal funding responsibility among fixed, wireless and over-the-top services.<sup>6</sup> It seems clear that comprehensive contribution reform, if it happens, will take a while to achieve. Therefore, in the interim, the Commission should take what steps it can to reform the existing revenues contribution mechanism to make the Universal Service Fund more sustainable, simplify the rules so as to reduce uncertainty, and revise the rules to increase fairness, equitable treatment, competitive neutrality, simplicity and administrability.

As stated in BT's comments filed July 9, 2012 in this docket, one of the areas where the Commission can progress these objectives is with respect to MPLS-based services.<sup>7</sup> MPLS-based services are core to most enterprises' wide area networks in the USA.<sup>8</sup> Yet industry providers and enterprises lack uniformity and certainty about whether contributions are due on their MPLS-based services. Some providers pay on a portion or all of their MPLS-based service revenues while others do not. This inconsistent treatment is affecting a significant portion of the enterprise services market. Most stakeholders that commented specifically on the MPLS

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Telecommunications Users Committee, WC Dkt No. 06-122, pp 9-28 (filed July 9, 2012) ("Ad Hoc Comments").

<sup>4</sup> See e.g. Comments of US Cellular Corp, WC Dkt No. 06-122, pp. 32-35 (filed July 9, 2012); Comments of RCA, WC Dkt No. 06-122, pp. 9-12 (filed July 9, 2012); Comments of Peerless Network Inc., WC Dkt No. 06-122, pp. 11-13 (filed July 9, 2012) ("Peerless Comments").

<sup>5</sup> See e.g. Comments of Independent Telephone and Telecommunications Alliance, WC Dkt No. 06-122, pp. 17-21 (filed July 9, 2012).

<sup>6</sup> See e.g. Comments of AT&T, WC Dkt No. 06-122, p. 3 (filed July 9, 2012) ("AT&T Comments").

<sup>7</sup> Comments of BT Americas Inc. and its US Affiliates, WC Dkt No. 06-122, pp. 1-4 (filed July 9, 2012) ("BT Comments").

<sup>8</sup> See Verizon Comments at p.27.

Industry Group's proposal do not oppose this proposal.<sup>9</sup> The exceptions are Earthlink, Integra and tw telecom ("Earthlink et al") which jointly filed comments. They cited implementation challenges of having to "purchase or develop new software or applications that would apply the appropriate MPLS Assessable Revenue Component ("MARC") proxy" while retaining the existing systems/software for non-MPLS services, having to monitor and update with the new access rate changes periodically, and having to pay based on speed even though pricing for some services (e.g. "burstable services") are not based on speed.<sup>10</sup>

They are correct that some investment in the development of systems would be required to deal with assessments on MPLS-based services in order to create competitive neutrality and a bright-line rule regarding what is assessable. However, making changes would increase administrability, fairness, competitive neutrality, clarity and certainty regarding a large segment of enterprise services and revenues. In addition, such changes are necessary to address an intractable and growing problem. MPLS-based WANs already are incorporated into eighty four percent of enterprises' WANs,<sup>11</sup> and the use of MPLS technology is increasing. The current system of classifying MPLS-based services as information or telecommunications is untenable. No other solutions have been proposed that enjoy wide support and that would fix the problem

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<sup>9</sup> See e.g. Verizon Comments; Sprint Comments; BT Comments; Comments of XO Communications Services LLC WC Dkt No. 06-122 (filed July 9, 2012) ("XO Comments"); Comments of CenturyLink, WC Dkt No. 06-122, p. 7 (filed July 9, 2012); Comments of Cincinnati Bell, WC Dkt No. 06-122 (filed July 9, 2012); AT&T Comments at pp 27-28. Also note that NTT America and Orange Business Services support the MPLS Industry Group Proposal. See Letter from MPLS Industry Group, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 06-122 (filed Mar. 29, 2012) (MPLS Industry Group Letter).

<sup>10</sup> Comments of Earthlink, Integra and TW Telecom, WC Dkt No. 06-122, pp. 9-11 (filed July 9, 2012).

<sup>11</sup> Verizon Comments at p. 27.

while leveling the playing field. The value for industry and customers as a whole obtained out of moving forward with the MPLS Industry Group's proposal is greater than the negative of having to make systems and process changes. Therefore, the Commission should move forward by adopting rules implementing the MPLS Industry Group's proposal.

Earthlink et al also express concerns about having to monitor NECA tariffs. Their concern is unwarranted. The MPLS Industry Group proposed that the Commission derive a set of proxy revenues based on the NECA tariffs. These proxy rates could be in effect for some period of time such as three years. Therefore, there really would not be a need to monitor the NECA tariffs and update rates on a frequent basis.

Finally, Earthlink et al express concern about paying USF fees based on a capacity-basis when the pricing of certain MPLS-based services are not based on capacity. They cite "burstable" services as an example of such services. The MPLS Industry Group's proposal is a revenue-based proposal which uses proxy revenues based on speed, but this is just a mechanism to level the playing field. The proxy does not represent nor is it intended to represent an absolute correlation between how each provider prices and bills every one of its MPLS-based services and the fees each would otherwise have paid into the universal service fund based on actual billed revenues. It is simply a reasonable proxy that ensures competitive neutrality. With respect to burstable services, the Commission could set a rule requiring payment based on the proxy revenue for the lower capacity routinely delivered to the customer or based on the highest capacity delivered to the customer. This is not an insurmountable problem for which one cannot derive a fairly simply rule.

In addition, a few commenters oppose any new rules regarding the inclusion of MPLS-based services in the assessable base. The Fiber Provider Coalition argues that if the Commission makes clear that USF is due on basic transmission that is “jurisdictionally interstate and which is a separate element of the service” this will suffice to establish technological and competitive neutrality.<sup>12</sup> BT disagrees. It is unclear what a “separate element of the service” is. Does it mean offering an element as standalone service? Or does it mean invoicing for the element rather than bundling the element in the total price to the customer? If the assessability of USF depends on one or both of these pre-conditions, then some providers may be able to adjust the manner in which they offer and/or bill their services such that USF can be lawfully avoided. This then perpetuates market distortion because some services that compete with each other will pay into the Fund while others will not. Other commenters argue against any inclusion of MPLS-based services in the base.<sup>13</sup> Again, the Commission cannot create a fair and equitable mechanism by exempting from USF contribution obligations some services, but not others even though the services compete with each other.

On the issue of widening the base by including broadband Internet access revenues, BT agrees with the views of commenters like the California Public Utilities Commission (“CPUC”), the Ad Hoc Telecommunications Users Committee and others that it is only fair and equitable that providers of broadband services should contribute to universal service if broadband services are to be a major beneficiary of universal service funding.<sup>14</sup> Moreover, the federal USF rate

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<sup>12</sup> See Comments of the Fiber Provider Coalition, WC Dkt No. 06-122, p. 16 (filed July 9, 2012).

<sup>13</sup> See e.g. Peerless Comments at 13.

<sup>14</sup> See Ad Hoc Comments at pp. 39-40; Comments of the California Public Utilities Commission and the People of the State of California, WC Dkt No. 06-122, p.7 (filed July 9, 2012) (“CPUC

could decrease to as little as two percent if broadband Internet access revenues were included in the assessable base.<sup>15</sup> It would be much fairer and more equitable to spread federal universal service fees of two percent over many services instead of burdening a narrower set of services with 15-18% assessment rates. A two percent assessment would translate into a small assessment of seventy cents per month on a broadband subscription costing thirty five dollars per month – hardly a burdensome USF assessment. Compare this to six dollars per month in federal universal service fees that would have to be paid on interstate voice services when the federal USF rate is 17-18%. The latter scenario is indisputably unfair. Finally, if the Commission is concerned about the cost of broadband to consumers depressing broadband takeup, it would seem more fruitful to adopt policies that would promote service competition to drive down broadband prices to consumers.

Some commenters have also expressed concerns about including broadband Internet access in the assessable base because of definitional issues surrounding the assessment. Verizon, for instance, is concerned about line drawing between telecommunications and information services that are part of the broadband service. It is concerned that a provider might be assessed not only on pure broadband Internet access services but also on content and applications provided over the Internet connection.<sup>16</sup> The definitional issues are fundamentally the same ones faced by providers of MPLS-based services and for which the MPLS Industry Group has suggested a competitively neutral way forward. One solution would be for the Commission to

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Comments”); XO Comments at pp. 28-31, Comments of COMPTTEL, WC Dkt No. 06-122, p.14-17 (filed July 9, 2012).

<sup>15</sup> CPUC Comments at 7.

<sup>16</sup> See e.g. Verizon comments at 41-43.

develop a more generic proxy methodology that would apply not only to MPLS-based services, but also broadband Internet access services.

BT also agrees with the commenters who oppose the Commission's proposal to require providers to set up dedicated trust funds for the benefit of USF to strengthen the Commission's and USAC's position in the event of bankruptcies.<sup>17</sup> As NCTA and XO point out, the remedy proposed by the Commission is overly burdensome in light of the scope of the insolvency problem faced by the Commission.

The Commission must simplify its contribution rules. When it adopts new rules or creates or maintains exemptions that result in loopholes, it should ask itself the following questions: –

- (1) Are the rules necessary to address a significant problem?
- (2) Do the rules promote fair and equitable treatment and competitive neutrality?
- (3) Do the rules increase the sustainability of the Fund?
- (4) Are the rules the least administratively burdensome way of resolving the problem?

The situation with MPLS-based services is one that clearly requires new rules. This is a large and festering problem for enterprises and their providers. The problem is large because MPLS technology is embedded in most enterprises WANs now. The problem and uncertainty has festered for quite a few years now, and the magnitude of the problem only increases as time passes. The MPLS Industry Group's proposal would promote fairness, equitable treatment and

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<sup>17</sup> See e.g. Comments of the National Cable and Telecommunications Association, WC Dkt No. 06-122, p. 7 (filed July 9, 2012); XO Comments at 51-52.

competitive neutrality. It would more likely than not increase the sustainability of the Fund. In addition, the MPLS Industry Group's proposal would be easier to administer than the current rules. Finally it would obviate the need for some of the new rules proposed by the Commission such as the bundling rule.

## CONCLUSION

For the reasons stated above, the Commission should adopt the MPLS Industry Group's proposal, expand the contributions regime to include broadband Internet access in the assessable base, and take steps to simplify the contribution regime as much as possible.

Respectfully submitted,

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Dated: August 6, 2012